

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

In Re:	§	
	§	Case No. 21-10224-tmd
HUMBERTO BONELLY	§	
LABRADA,	§	
	§	
Debtor	§	Chapter 7
	§	

TRUSTEE'S OBJECTION TO DEBTOR'S EXEMPTIONS

This pleading requests relief that may be adverse to your interests.

If no timely response is filed within twenty-one (21) days from the date of service, the relief requested herein may be granted without a hearing being held.

A timely response is necessary for a hearing to be held.

TO THE HONORABLE TONY M. DAVIS, U.S. BANKRUPTCY JUDGE:

COMES NOW Ron Satija, Chapter 7 Trustee (the "Trustee") for the bankruptcy estate of Humberto Bonelly Labrada and files this *Objection to Exemptions* (the "Objection"). As set forth in more detail below, the Debtor filed Amended Schedules claiming a homestead exemption on two various real estate lots¹ that the Debtor testified were solely for investment purposes.²

The Trustee objects to the Debtor's attempt to exempt the Property as his homestead on the basis the Debtor has not met the requisites for protecting the Property as his under state law. The Trustee requests the Court should deny the Debtor's requested exemptions for the Property. In support thereof, the Trustee would respectfully show as follows:

¹ The Debtor listed 12501 Tech Ridge Blvd., #221, Austin, TX 78753 with a \$1.00 value ("Tract 1" and listed 20710 Tahoe Lane, Lago Vista, TX 78645 (Lot 16027 BAR-K Ranches Plat 16, Travis County, Texas) ("Tract 2") with a \$17,900.00 value (collectively, the "Property").

² Debtor testified during his continued Creditor's Meetings that the Property was solely for investment purposes and he did not intend to reside on the property as his homestead now or in the future.

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the subject-matter of this Objection pursuant to 28 U.S.C. §§ 157(b) and 1334. This matter constitutes a core proceeding under, *inter alia*, 28 U.S.C. § 157(b)(2)(A), (B) and (O).

2. The statutory predicates for the relief requested herein are 11 U.S.C. § 522, Fed. R. Bankr. P. 4003, 9013 and 9014.

II. BACKGROUND

3. On March 30, 2021, the above-captioned Debtor filed for relief under Chapter 7 of the Bankruptcy Code via voluntary petition for relief filed with his schedules. (Docket No. 1).

4. On March 4, 2021, Mr. Ron Satija was appointed as Trustee.

5. The Debtor amended his Schedules, including exemptions on May 27, 2021. (Docket No. 9). On July 7, 2021, the Debtor further amended his Schedules, including exemptions, (Docket No. 26) before filing a second set of Amended Schedules (the “Amended Schedules”) later that same day. (Docket No. 29).

6. The 341 Meeting was originally heard on May 6, 2021 and continued to May 27, 2021, June 17, 2021, July 8, 2021, and finally July 12, 2021 on which date the 341 was ultimately concluded. At the 341 Meeting(s), the Debtor testified that the Property listed in his Amended Schedules was not his homestead as listed, but was in fact investment property and he did not plan to reside on the Property.

7. In his Amended Schedules³, the Debtor listed the Property, broken down into Tract 1 as 12501 Tech Ridge Blvd., #221, Austin, TX 78753 with a \$1.00 value (Debtor’s leasehold interest) and listed Tract 2 as 20710 Tahoe Lane, Lago Vista, TX 78645 (Lot 16027 BAR-K

³ Attached as Exhibit A is a true and correct copy of the Debtor’s Amended Schedules (Docket No. 29) filed on July 7, 2021 in this above-referenced case.

Ranches Plat 16, Travis County, Texas) with a \$17,900.00. The Debtor listed the Property and asserted Texas state homestead exemptions on the Property in his Amended Schedules. The Debtor asserted full homestead exemptions on the Property under Texas homestead exemption statutes and the Texas Constitution.

8. However, the Debtor testified during his 341 Meetings that the Property he listed as his homestead was not his homestead and that he purchased Tract 2 as an investment, Tract 1 was solely a leasehold interest not homestead, and that he does not reside or intend to reside at the Property in the future.

III. ARGUMENTS AND BASIS THEREFOR

9. The Trustee respectfully asserts the Court should deny the Debtor's homestead exemption in the Property listed in his Amended Schedules because the Debtor has not met his required burden to establish his right to Texas homestead exemptions in the Property.

A. The Debtor testified the Property is not his homestead but investment property.

10. The Debtor's exemptions are limited to the bankruptcy estate and the property interests the Debtor possessed at the time of filing. The Debtor is allowed to claim exemptions under federal or state law only up to the extent and value of his interest in property at the time of filing. The Debtor is also limited in his ability to protect property when at the time of filing he did not reside on the Property or intend to reside on the Property in the future as his homestead. At the time of filing, he did not qualify for homestead protection for his Property and claiming it as a homestead. Such an intention after filing bankruptcy does not render the Property exempt.

11. Texas law provides extremely broad protection for homesteads.⁴ Texas Constitution and the Texas Property Code creates the debtor's legal interest in a homestead to

⁴ *In re Comu*, 542 B.R. 371, 384–85 (Bankr. N.D. Tex. 2015)

protect from seizure and encumbrances in all but a few very specific instances.⁵ Lease interests in property do not come into play in determining homestead interests in real estate. Homestead rights are to be liberally construed, but, in order to apply, the debtor has the initial burden to establish the character of his property as his homestead by showing a combination of both (1) overt acts of homestead usage and (2) an intention to claim the property as his homestead.⁶ “[M]ere ownership or possessory interest is not of itself sufficient to establish a homestead.”⁷

12. Establishing the nature of property as homestead is “typically a low hurdle and, in the usual case, mere evidence of ‘overt acts of homestead usage’ in the form of possession and usage of the property as a homestead is sufficient.”⁸ When a debtor actually resides on property claimed as homestead, the court does not typically need to research the second prong of “‘intention to claim as a homestead’ because actually residing on the property is ‘the most satisfactory and convincing evidence of intention.’”⁹

13. Here, however, the Debtor testified under oath that he does not reside on the Property as his homestead, he has never intended to do so, and he purchased the Property solely as an investment. The Debtor’s testimony alone supports the denial of any homestead exemption the Debtor asserts in the Property.

14. The Debtor has not satisfied either of the homestead requirements. Therefore, the Debtor’s Property does not qualify for homestead protection under Texas law.

15. Further, the Trustee respectfully requests the Court completely deny the Debtor’s amended exemptions in the Property and grant his Objection.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 385.

⁹ *Id.*

IV. CONCLUSION

Based on the foregoing, the Trustee respectfully requests that this Court enter an order: 1) denying the Debtor's amended Texas homestead exemptions on the Property; 2) granting the Trustee's Objection, and 3) granting such other relief as the Court deems just and proper.

Date: August 6, 2021

Respectfully submitted,

HAYWARD PLLC

/s/ Jamie Kirk

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**COUNSEL FOR RON SATIJA,
CHAPTER 7 TRUSTEE**

CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2021, I electronically filed the foregoing with the clerk of the court using the CM/ECF system to notice the United States Trustee, Debtor's counsel, and all other parties receiving CM/ECF notices. Additionally, on August 6, 2021, or within one business day thereof, I served the foregoing on the Debtor below via United States First Class Mail.

/s/ Jamie Kirk

Jamie Kirk

Label Matrix for local noticing

U.S. BANKRUPTCY COURT

American Express National Bank

0542-1

903 SAN JACINTO, SUITE 322

c/o Becket and Lee LLP

Case 21-10224-tmd

AUSTIN, TX 78701-2450

PO Box 3001

Western District of Texas

Malvern PA 19355-0701

Austin

Fri Aug 6 17:11:16 CDT 2021

Amex

Barclays Bank Delaware

Capital One Bank

PO Box 981537

P.o. Box 8803

Po Box 31293

El Paso, TX 79998-1537

Wilmington, DE 19899-8803

Salt Lake City, UT 84131-0293

Cavalry Portfolio Serv

Cavalry SPV I, LLC

(p)JPMORGAN CHASE BANK N A

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Valhalla, NY 10595-2322

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MONROE LA 71203-4774

Citi

Conn Appliances Inc

Conn Appliances, Inc.

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Beaumont, TX 77704-2358

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Malvern PA 19355-0702

(p)DISCOVER FINANCIAL SERVICES LLC

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East Harbor Financial

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Discover Products Inc

12360 NW South River Drive Ste B

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PO Box 3025

Miami, FL 33178-1193

New Albany, OH 43054-3025

East Harbor Financial

Financial Pacific Leasing

Freedom Trucking

c/o Christopher V Arisco

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12221 Merit Drive

Padfield & Stout LLP

Federal Way, WA 98001-9546

Dallas, TX 75251-2202

420 Throckmorton #1210

Fort Worth TX 76102-3792

Ironwood Finance, Inc

JPMorgan Chase Bank, N.A.

MERRICK BANK

800 North Shoreline Blvd \$1500s

s/b/m/t Chase Bank USA, N.A.

Resurgent Capital Services

Corpus Christ, Tx 78401-3700

c/o National Bankruptcy Services, LLC

PO Box 10368

Old Bethpage, NY 11804-9001

P.O. Box 9013

Greenville, SC 29603-0368

Addison, Texas 75001-9013

Merrick Bank Corp

Midland Credit Management

Midland Credit Management, Inc.

Po Box 9201

320 East Big Beaver

PO Box 2037

Old Bethpage, NY 11804-9001

Troy, MI 48083-1238

Warren, MI 48090-2037

PRA Receivables Management, LLC

Portfolio Recov Assoc

Quantum3 Group LLC as agent for

PO Box 41021

120 Corporate Blvd Ste 100

Credit Corp Solutions Inc

Norfolk, VA 23541-1021

Norfolk, VA 23502-4952

PO Box 788

Kirkland, WA 98083-0788

Reliant Towing

San Paloma Apartments

Synchrony Bank

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Att: Bankruptcy Department

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Orlando, FL 32896-5060

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Austin, TX 78766-7208

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g) (4) .

Chase

Po Box 15369

Wilmington, DE 19850

Discover

Pob 15316

Wilmington, DE 19850

End of Label Matrix

Mailable recipients 36

Bypassed recipients 0

Total 36